

Entered -11-14-00 - sb
CL 00L0692 - GWENDOLYN BURNS

00- *R*-2029

CLAIM OF: **FULTON COUNTY GOVERNMENT**
through its attorney,
Willie J. Lovett, Jr.
141 Pryor Street, SW, Suite 4038
Atlanta, Georgia 30303

For damages alleged to have been sustained as a result of
overpayment of water fees from 1984 to present in unincorporated
Fulton County.

THIS ADVERSED REPORT IS
APPROVED

BY: *Rosalind Rubens Newell*
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

C-12

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0692

Date: November 30, 2000

Claimant /Victim FULTON COUNTY GOVERNMENT
BY: (Atty) (Ins. Co.) Willie J. Lovett, Jr.
Address: 141 Pryor Street, SW, Suite 4038, Atlanta, Georgia 30303
Subrogation: Claim for Property damage \$ 200,000.00 Bodily Injury \$
Date of Notice: 11/14/00 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 1984 to present Place: Unincorporated Fulton County
Department WATER Division
Employee involved Disciplinary Action:

NATURE OF CLAIM: The claimant alleges that is has been unfairly overcharged for water services. The issues by the claimant are currently being litigated in the Superior Court of Fulton County. (Duplicate claim - See claim #00L0154.)

INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental Ministerial X
Improper Notice More than Six Months Other X Damages reasonable
City not involved X Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager: Concur/date 11-30-00
Committee Action: Council Action

OFFICE OF THE FULTON COUNTY ATTORNEY

141 PRYOR STREET, S.W.
SUITE 4038
ATLANTA, GEORGIA 30303

BURNS
11/14/00
Gwen

OVERTIS HICKS BRANTLEY
COUNTY ATTORNEY



FULTON COUNTY

TELEPHONE (404) 730-7750
FACSIMILE (404) 730-6324

ENTERED - 11-14-00 - SB
October 30, 2000 00L0692 - GWEN BURNS

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

The Honorable Bill Campbell
Mayor
City of Atlanta
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

The Honorable Robb Pitts
President
Atlanta City Council
55 Trinity Avenue
Atlanta, Georgia 30335

Susan P. Langford, Esq.
City Attorney
City of Atlanta, Dept. of Law
68 Mitchell Street, Suite 4100
Atlanta, Georgia 30335

Re: Ante-Litem Notice - Claim for Excessive Charges for
Providing Water Service to Fulton County, Georgia

Dear Mayor Campbell, President Pitts and Ms. Langford:

This office represents Fulton County, Georgia ("Fulton County" or the "County"), a customer who receives water service provided by the City of Atlanta, Georgia ("Atlanta" or the "City"). This letter constitutes ante-litem notice, pursuant to O.C.G.A. § 36-33-5, on behalf of Fulton County regarding its claim that the City has assessed excessive charges for the water service provided by the City.

Since the 1940's, the City of Atlanta has provided water service to Fulton County. Since 1984 and continuing through May 1, 2000, for user locations in unincorporated Fulton County,

Honorable Mayor Bill Campbell
Honorable Rob Pitts, Atlanta City Council President
Ms. Susan P. Langford, Atlanta City Attorney
October 30, 2000
Page 2

the City charged Fulton County approximately thirty-four percent (34%) more for water service than it charges water customers residing within the City. Fulton County raised questions about the differential in rates charged by the City of Atlanta to its own residents versus the higher rates charged to Fulton County. Moreover, Fulton County notified the City that the 34% water rate differential was arbitrary, unreasonable, unlawful and violated the laws and public policies of the State of Georgia.¹

After passage of the Service Delivery Strategy Act (1997), the Atlanta/Fulton County Water Resources Commission contracted with Black & Veatch, LLP, to perform a geographic rate study. In a final report dated July 21, 1998, titled, "Geographic Water Rate Study for the Atlanta/Fulton County Water Resources Commission," Black & Veatch confirmed that the City of Atlanta had been imposing a 34% surcharge on residents of unincorporated Fulton County since 1984. Black & Veatch further found that the 34% surcharge could not be justified by the cost of providing service to residents of Fulton County and that only a 5% surcharge could be justified. Other experts have opined, however, that no surcharge (0%) justifiably can be imposed on customers in unincorporated Fulton County.

On May 1, 2000, the Atlanta City Council adopted a Substitute Ordinance by City Utilities Committee "Amending The Rates To Be Charged To All Premises Or Facilities Served By The City Of Atlanta Water System As Per Section 154-111 and 154-112 Of The Code Of Ordinance Of The City Of Atlanta" that effectively reduced the water rate surcharge to Fulton County from 34% to 21.2%, effective May 1, 2000. Based on the studies mentioned above, Fulton County has determined that the City continues to charge excessive rates for the water supplied to Fulton County. Therefore, all overcharges from May 1, 2000, as well as overcharges going forward are included in this claim.

With regard to the dollar amount of the overcharges by the City of Atlanta, we anticipate that a payment of in excess \$50,000.00 will be required to cover the excessive water service charges paid by Fulton County from May 1, 2000 to present. If the City has an interest in resolving this matter without the necessity of litigation, please contact me well before the thirty (30) day notice period has expired.

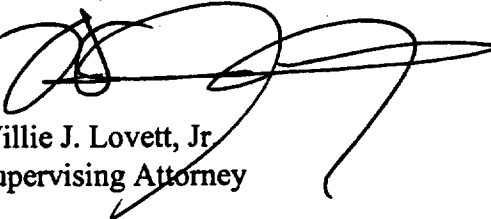
¹ For example, the Service Delivery Strategy Act (1997), provides, in O.C.G.A. § 36-70-24(2)(A) that water "fees charged to customers located outside the geographic boundaries of the service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries of the service provider."

Honorable Mayor Bill Campbell
Honorable Rob Pitts, Atlanta City Council President
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October 30, 2000
Page 3

On or after the thirty-first day following the date of this letter, Fulton County will amend its Complaint, Civil Action File No. 2000-CV-20379, in the Superior Court of Fulton, County to seek the recovery of monetary damages from the City of Atlanta for all excessive water rate charges imposed during the relevant period of limitations through and including the time of trial. Because the City has imposed these excessive charges knowing that they could not be justified, the City is potentially liable for the County's reasonable attorney's fees.

Thank you for your consideration of this serious matter.

Yours very truly,



Willie J. Lovett, Jr.
Supervising Attorney

cc: Thomas C. Andrews, County Manager
Overtis Brantley, County Attorney
William Turner, Deputy County Attorney
Denzil A. Stewart, Senior Attorney
Vincent D. Hyman, Staff Attorney
Nicole Holt, Staff Attorney